

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

RICHARD M. OSBORNE,

Debtor.

Case No. 17-17361

Chapter 7

Judge: Arthur I. Harris

**MOTION OF LEGACY RIDGE PA LLC TO COMPEL
TATONKA OIL COMPANY, LLC**

Legacy Ridge Pa LLC (“Legacy Ridge”), pursuant to Rule 45 of the Federal Rules of Civil Procedure, made applicable by Federal Bankruptcy Rule 9016, and Federal Bankruptcy Rule 2004, moves the Court for an Order, a proposed form of which is attached hereto as Exhibit A, compelling Tatonka Oil Company, LLC (“Tatonka”), which is owned in its entirety by Richard M. Osborne (the “Debtor”), to fully and adequately respond to Legacy Ridge’s *Ex Parte* Motion for Examination Pursuant to Federal Rule of Bankruptcy Procedure 2004, which was filed with the Court on February 22, 2021 [Dkt. No. 1072] (the “Motion”) and the accompanying requests for production of documents. The Court granted the Motion on March 1, 2021 and entered an Order that also provided the accompanying requests for production of documents

[Dkt. No. 1076] (the “Order”). A copy of the Court’s Order and a subpoena addressed to Tatonka and its service agent was sent *via* certified mail on March 4, 2021. Yet, despite the Court’s Order commanding Tatonka to produce certain documents, Tatonka has failed to comply with the Court’s Order and the subsequent subpoena.

A memorandum in support of this Motion is attached.

Date: April 15, 2021
Cleveland, Ohio

Respectfully submitted,

THOMPSON HINE LLP

/s/ Scott B. Lepene

Scott B. Lepene (0076763)
3900 Key Center/127 Public Square
Cleveland, OH 44114
Phone: 216.566.5936
Scott. Lepene@ThompsonHine.com

Counsel for Legacy Ridge PA LLC

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**MEMORANDUM IN SUPPORT OF MOTION OF LEGACY RIDGE PA LLC
TO COMPEL TATONKA OIL COMPANY, LLC**

For the reasons more fully set forth below, Legacy Ridge PA LLC (“Legacy Ridge”) seeks entry of an order, a proposed form of which is attached hereto as Exhibit A, requiring Tatonka Oil Company, LLC (“Tatonka”), which is owned in its entirety by Richard M. Osborne (the “Debtor”), to comply with the Court’s Order (defined herein) and Subpoena (defined herein). In support hereof, Legacy Ridge respectfully states the following:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor’s Chapter 11 case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409. Section 105(a) of

Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 45 of the Federal Rules of Procedure (the “Federal Rules”), provides the predicate for the relief sought herein.

BACKGROUND

2. On December 17, 2017 (the “Petition Date”), Richard M. Osborne (the “Debtor”) filed for relief under Chapter 11 of the Bankruptcy Code.

3. On July 3, 2019, Debtor’s case was converted to one under Chapter 7 of the Bankruptcy Code.

4. Kari B. Coniglio is the duly appointed chapter 7 trustee in this case (the “Trustee”).

5. On March 24, 2020, the Trustee filed her Motion for Entry of Order (I) Authorizing and Approving Sale of Specific Real Property Free and Clear of Liens, Claims and Encumbrances, (II) Approving Bidding Procedures for the Sale of Specific Real Property, and (III) Approving Form and Manner of Notice [Dkt. No. 851] (“Sale Motion”) seeking authority to sell certain real property, including approximately 421.82 acres of land in Warren County, Pennsylvania, commonly known as 225 Swede Road, Tidioute, Pennsylvania 16351 (the “PA Compound”).

6. On April 23, 2020, the Court granted the Sale Motion [Dkt. No. 878].

7. On August 31, 2020, the PA Compound was sold at public auction for the net sum of \$1,694,824.39 to Legacy Ridge.

8. Legacy Ridge purchased the PA Compound, which contained certain natural gas wells on the property (the “Gas Wells”).

9. Upon information and belief, the Gas Wells are owned by Tatonka.
10. Upon information and belief, Debtor is the 100% owner of Tatonka.
11. Legacy Ridge is contemplating the purchase of the Debtor's equity interests in Tatonka through this bankruptcy.
12. As part of its due diligence in seeking to acquire those equity interests, Legacy Ridge seeks additional information and documentation related to the Debtor's interest in Tatonka.
13. Thus, Legacy Ridge filed an *Ex Parte* Motion for Examination Pursuant to Federal Rule of Bankruptcy Procedure 2004 with the Court on February 22, 2021 [Dkt. No. 1072] (the "Motion") and the accompanying requests for production of documents. The Court granted the Motion on March 1, 2021 and entered an Order, which also provided the accompanying requests for production of documents [Dkt. No. 1076] (the "Order").¹
14. Pursuant to the Court's Order, Tatonka was required to "produce and make available for inspection and copying certain documents. . . within fourteen (14) days after service of a subpoena."
15. Consistent with the Court's Order and Legacy Ridge's efforts to notify Tatonka, Legacy Ridge sent to Tatonka's service agent located at 7001 Center St., Mentor, Ohio 44060, a subpoena (the "Subpoena") and copy of the Court's Order, which included the requests for production of documents relating to the Gas Wells and the Debtor's ownership interest in

¹ As this Court is aware, Legacy Ridge filed an *Ex Parte* Motion for 2004 Examination of the Debtor on February 19, 2021 [Dkt No. 1069], which resulted in the Debtor filing an Objection to Legacy Ridge's motion on February 20, 2021 [Dkt. No. 1070] (the "Objection"). A hearing is scheduled for April 20, 2021 at 10 a.m. (EST) on this matter. As reflected in Debtor's Objection, Debtor indicated that, among other things, Legacy Ridge must properly notify Tatonka of Legacy Ridge's request for the production of documents. Legacy Ridge also filed an *Ex Parte* Motion for 2004 Examination of the Trustee on February 22, 2021 [1071], which was granted by the Court on March 1, 2021. The Trustee has produced the requested documents to Legacy Ridge, subject to a certain protective order between the parties.

Tatonka. A copy of the Subpoena (note production is attached to Order) and Court's Order is attached to this Motion as Exhibit B; *See also* Declaration of Scott B. Lepene attached hereto as Exhibit C.

16. Legacy Ridge has attempted to obtain the requested discovery responses through amicable means prior to filing this Motion. Specifically, on March 25, 2021, Legacy Ridge sent Debtor's counsel *via* e-mail a copy of the Subpoena and Order that was sent to Tatonka. *See Exhibit C* at ¶ 4. Legacy Ridge also included on this e-mail, Richard Baumgart, Esq., who had previously represented Tatonka in connection with its acquisition of the Gas Wells in the chapter 7 bankruptcy of Oz Gas, LTD (*In re: Oz Gas, LTD*, United States Bankruptcy Court for the Western District of Pennsylvania, Case No. 12-10057-TPA). To date, no party has entered an appearance in Debtor's bankruptcy on behalf of Tatonka. *Id.* Legacy Ridge has received no responses from any party purporting to represent Tatonka in the pending bankruptcy proceeding, and no party has responded on behalf of Tatonka with regard to the Subpoena that it was served. *Id.*

17. Tatonka's continued refusal to comply with the Court's Order and to provide Legacy Ridge with the information it needs to help it evaluate whether it intends to acquire the Gas Wells has left Legacy Ridge with no choice but to seek this Court's intervention.

RELIEF REQUESTED

18. Legacy Ridge seeks entry of the Proposed Order compelling Tatonka to fully comply with the Subpoena by (i) directing Tatonka to produce to Legacy Ridge all documents and data responsive to the Subpoena within ten (10) days after entry of the Proposed Order; and (ii) in the event that Tatonka fails to fully comply with the Proposed Order, authorizing Legacy

Ridge to move by an order to show cause for a further order holding Tatonka in contempt and imposing coercive *per diem* civil sanctions until full compliance with the Subpoena has been made by Tatonka.

BASIS FOR RELIEF

19. This Court has the express authority to compel compliance with its orders. *See Cunningham v. Pension Benefit Guar. Corp.*, 235 B.R. 609, 618 (N.D. Ohio 1999) (“Section 105 of the Bankruptcy Code gives bankruptcy courts broad equitable powers to enforce orders or take action necessary to enforce the provisions of Title 11.”)

20. Further, Bankruptcy Rule 2004 states a separate and independent basis for compelling compliance. Bankruptcy Rule 2004 states that the production of documents “may be compelled as provided in Rule 9016.” Moreover, Bankruptcy Rule 9016 provides that Federal Rule 45, governing the enforcement of subpoenas in particular, applies in cases under the Bankruptcy Code.

21. In this case, this Court approved the issuance of the Subpoena and retained jurisdiction for all matters regarding the implementation of the Order. The terms of the Subpoena and accompanying requests for production are clear and unambiguous.

CONCLUSION

22. For the foregoing reasons, Legacy Ridge seeks entry of the Proposed Order compelling Tatonka to fully comply with the Subpoena by (i) directing Tatonka to produce to Legacy Ridge all documents and data responsive to the Subpoena within ten (10) days after entry of the Proposed Order; and (ii) in the event that Tatonka fails to fully comply with the Proposed Order, authorizing Legacy Ridge to move by an order to show cause for a further

order holding Tatonka in contempt and imposing coercive *per diem* civil sanctions until full compliance with the Subpoena has been made by Tatonka.

Date: April 15, 2021
Cleveland, Ohio

Respectfully submitted,

THOMPSON HINE LLP

/s/ Scott B. Lepene

Scott B. Lepene (0076763)

3900 Key Center/127 Public Square

Cleveland, OH 44114

Phone: 216.566.5936

Scott. Lepene@ThompsonHine.com

Counsel for Legacy Ridge PA LLC

CERTIFICATE OF SERVICE

I certify that on this date, a true and correct copy of the foregoing *Motion to Compel* and *Memorandum in Support* were served on all parties of record through the Court's CM/ECF system.

I further certify that on this date, a true and correct copy of the foregoing *Motion to Compel* and *Memorandum in Support* was served via regular U.S. Mail on Tatonka Oil Company, LLC at the following address:

7001 Center St.
Mentor, Ohio 44060
Attn: Daryll L. Knight

This 15th day of April 2021.

THOMPSON HINE LLP

/s/ Scott B. Lepene
Scott B. Lepene (0076763)

Counsel for Legacy Ridge PA LLC